

1 Hon. Thomas S. Zilly
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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE WESTERN DISTRICT OF WASHINGTON
13
14 AT SEATTLE

15 HUNTERS CAPITAL, LLC, et al.,
16 Plaintiffs,
17 v.
18 THE CITY OF SEATTLE,
19 Defendant.

20 Civil Action No. 20-cv-00983-TSZ

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28 **MOTION FOR LEAVE TO FILE
BRIEF IN SUPPORT OF PLAINTIFFS
AND IN OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

**Note on Motion Calendar:
Nov. 18, 2022**

I. INTRODUCTION AND RELIEF REQUESTED

Pursuant to Fed. R. Civ. P. 7 and Local Rule 7, Pacific Legal Foundation (PLF) respectfully requests leave to file the accompanying brief *amicus curiae* in support of Plaintiffs, Hunters Capital, LLC, et al., and against Defendant the City of Seattle's motion for summary judgment, Dkt. # 111. Amicus applicant advised all parties of its intent to file this motion and the proposed amicus brief, which addresses only Plaintiffs' claim that the Fifth Amendment obligates the City of Seattle to pay just compensation to numerous Capitol Hill homeowners and businesses who were temporarily deprived of property rights as a result of the City's decision to help establish and maintain the "Capitol Hill Occupied Protest" (CHOP). Plaintiffs are

1 unopposed to our request and Defendant has stated that it will likely take no position on the
 2 motion, but nonetheless reserves the right to oppose.

3 **II. STATEMENT OF INTEREST**

4 PLF was founded in 1973 and is widely recognized as the most experienced nonprofit
 5 legal foundation of its kind. PLF attorneys litigate matters affecting the public interest at all
 6 levels of state and federal courts and represent the views of thousands of supporters nationwide
 7 who believe in limited government and private property rights. PLF attorneys have participated
 8 as lead counsel in several cases before the U.S. Supreme Court in defense of the right of
 9 individuals to make reasonable use of their property, and the right to obtain just compensation
 10 when that right is infringed. *See, e.g., Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (2021);
 11 *Pakdel v. City & Cnty. of San Francisco*, 141 S. Ct. 2226 (2021); *Knick v. Township of Scott*,
 12 139 S. Ct. 2162 (2019); *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013);
 13 *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001); *Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S.
 14 725 (1997); and *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987). PLF has also participated
 15 as *amicus curiae* in numerous property rights cases before the U.S. Supreme Court, including in
 16 *Marvin M. Brandt Revocable Tr. v. United States*, 572 U.S. 93 (2014), *Arkansas Game & Fish*
 17 *Comm'n v. United States*, 568 U.S. 23 (2012); *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528
 18 (2005); *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999); and *Dolan*
 19 *v. City of Tigard*, 512 U.S. 374 (1994). PLF has a strong interest in this case, and is uniquely
 20 positioned to comment on these issues, having participated as lead counsel in *Cedar Point*
 21 *Nursery*, 141 S. Ct. 2063, the proper application of which is central to the parties' arguments on
 22 summary judgment. In filing this brief, amicus focuses only on the tests applicable to Plaintiffs'
 23 takings claims and urges this Court to deny the City's motion for summary judgment on
 24 Plaintiffs' takings claim.

25 **III. ARGUMENT**

26 The U.S. Supreme Court has developed several distinct tests for evaluating when a public
 27 action so impairs property rights that it rises to a taking requiring just compensation under the
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1 Fifth Amendment. The Washington State Supreme Court has likewise developed tests responsive
 2 to the different ways in which government may take an interest or right in private property.
 3 Proper application of these tests (and their defenses) is essential to the public interest and to
 4 ensure that the impaired property interest receives full constitutional protection when facing
 5 governmental abuse. *Cedar Point*, 141 S. Ct. at 2078 (“With regard to the complexities of
 6 modern society, we think they only reinforce the importance of safeguarding the basic property
 7 rights that help preserve individual liberty, as the Founders explained.”); *see also id.* at 2071
 8 (“[P]rotection of property rights is necessary to preserve freedom and empowers persons to
 9 shape and to plan their own destiny in a world where governments are always eager to do so for
 10 them.”) (quotation omitted).

11 “The classic role of amicus curiae is to assist a court in a case of public interest by
 12 supplementing the efforts of counsel[.]” *California v. U.S. Dep’t of Interior*, 381 F. Supp. 3d
 13 1153, 1163–64 (N.D. Cal. 2019) (internal quotations omitted) (citing *Miller-Wohl Co. v. Comm’r
 14 of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982)). “District courts may consider amicus
 15 briefs from non-parties concerning legal issues that have potential ramifications beyond the
 16 parties directly involved or if the amicus has unique information or perspective that can help the
 17 court beyond the help that the lawyers for the parties are able to provide.” *Macareno v. Thomas*,
 18 378 F. Supp. 3d 933, 940 (W.D. Wash. 2019) (internal quotations omitted). “There are no strict
 19 prerequisites that must be established prior to qualifying for amicus status; an individual seeking
 20 to appear as amicus must merely make a showing that his participation is useful or otherwise
 21 desirable to the court.” *California v. U.S. Dep’t of Interior*, 381 F. Supp. 3d at 1164; *see also*
 22 *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by Sandin v.
 23 Conner*, 515 U.S. 472 (1995). “[G]enerally courts have exercised great liberality in permitting
 24 amicus briefs.” *Id.*

25 PLF’s knowledge and expertise on property rights are illustrated by its extensive history
 26 as counsel before the Supreme Court of the United States. It has likewise participated as counsel
 27 or *amicus curiae* in the lower courts, including federal courts of appeals and state supreme
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1 courts. PLF will use the knowledge and experience it has acquired through this extensive history
2 to assist this Court in understanding the broader legal context of Plaintiffs' arguments, especially
3 regarding their claims that Defendant the City of Seattle interfered with their rights to exclude
4 and access their properties inside and nearby the CHOP.

5 **IV. CONCLUSION**

6 Based on the foregoing, the amicus applicant respectfully asks the Court to grant the
7 motion for leave to file the amicus brief attached hereto as Exhibit 1.

8 DATED: November 3, 2022.

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10 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ BRIAN T. HODGES
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